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UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

Melissa Clancy, custodial parent and
legal guardian of Penelope R. Saffer and
Jack S. Saffer, statutory beneficiaries of
Benjamin Saffer, deceased,

Plaintiffs,

v.

Southwest Valley Constructors Co, a
Delaware Corporation, and Adam Shane
Brown, an employee of Southwest Valley
Constructors, and John Doe, Jane Doe,
ABC, Inc., XYZ, LLC,

Defendants.

Case No.

COMPLAINT

(Tort-Motor Vehicle/Wrongful Death)
(28 U.S.C.A. § 1332(a)(1))

Assigned to: Hon.

The Plaintiff, Melissa Clancy, the custodial parent and legal guardian of Penelope R. Saffer and Jack S. Saffer, the Statutory Plaintiffs and Statutory Beneficiaries of Benjamin Saffer, deceased, hereinafter "Plaintiff," by and through her attorneys undersigned, for her Complaint, alleges as follows:

PARTIES/JURISDICTION

1. The Plaintiff, Melissa Clancy, is the custodial parent and legal guardian of Penelope R. Saffer and Jack S. Saffer, her minor children; that the minor children are the Statutory Plaintiffs and Statutory Beneficiaries of Benjamin Saffer, deceased; That the

1 statutory beneficiaries are the sole surviving children of the Decedent, Benjamin Saffer;
2 that the Plaintiffs are, and were, at all material times set forth herein, residents of Clark
3 County, Ohio.

4 (A) That Mr. Saffer died intestate on August 14, 2020, and is survived by
5 Penelope R. Saffer and Jack S. Saffer, his minor children.

6 (B) That Mr. Saffer left no assets for a probate estate, and a probate is not
7 necessary under the facts and circumstances.

8 (C) That pursuant to A.R.S. § 12-612, the minor children are the proper, and
9 only, Statutory Plaintiffs to bring this wrongful death action against the
10 Defendants.

11 2. That Defendant, Southwest Valley Constructors Co, is Delaware Corporation, with
12 its principal place of business located in New Mexico. See 28 U.S.C. § 1332(c); *Hertz*
13 *Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (for purposes of diversity jurisdiction, a
14 corporation is deemed to be a citizen of every state where it has been incorporated and
15 the state where it has its principal place of business).

16 3. That Southwest Valley Constructors Co.’s registered agent for service-of-process
17 is:

18 C T Corporation System
19 206 S. Coronado Ave.
20 Espanola, NM 87532

21 4. That Defendant, Adam Shane Brown, (“Defendant Brown”) was and is at all
22 material times set forth herein a resident of Maricopa County, Arizona.

23 5. That the amount in controversy exceeds the sum or value of \$75,000.00, exclusive
24 of interest and costs, and is between citizens of different states.

25 6. That this Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).
26

1 7. That Defendant Brown, was at all material times herein, an employee and/or agent
2 of Southwest Valley Constructors Co. performing a task or work assigned or authorized
3 by his employer and/or in the course and scope of his employment or agency; that
4 Defendant Southwest Valley Constructors Co. is responsible and liable for its employees,
5 to include, but not limited to Defendant Brown, for their negligent actions, errors and/or
6 omissions under the doctrine of *respondeat superior*.

7 8. That, upon information and belief, the Defendants herein, and each of them, where
8 appropriate, were, at all material times set forth herein, acting for, in the furtherance of,
9 and on behalf of their respective marital communities; that, upon information and belief,
10 where applicable, the Defendants, and each of them, were, at all material times set forth
11 herein, acting as an agent, expressed or implied, with the actual or apparent authority to
12 act on behalf of each and every other Defendant named herein.

13 9. That the Defendants have caused acts, events, errors, omissions and occurrences of
14 which the Plaintiffs presently complain in Cochise County, Arizona; that this Court has
15 original jurisdiction and venue is proper in the United States District Court of Arizona.

16 10. That the true names and capacities of the alias Defendants are presently unknown
17 to the Plaintiff and Plaintiff reserve the right to amend her complaint and its caption to
18 reflect the alias defendants' correct names and capacities, should the same be discovered.

19 **GENERAL ALLEGATIONS**

20 11. The Plaintiff hereby incorporates in its entirety the foregoing allegations and
21 contents of this Complaint, herein as if the same were fully set forth.

22 12. That on and before August 14, 2020, upon information and belief, Defendant
23 Southwest Valley Constructors Co. directed Defendant Brown to Cochise County,
24 Arizona to work as a welder wherein the work created the necessity of Defendant
25 Brown's travel.
26

1 13. That Defendant Brown, as a welder for Defendant Southwest Valley Constructors
2 Co., was required to supply the necessary welding equipment to the job site to perform
3 his daily duties as a welder.

4 14. That on or about August 14, 2020, at all relevant times herein, Defendant Brown
5 was transporting the welder to the job site as a necessity of the employment.

6 15. That at all material times herein Defendant Brown was unable to perform his
7 duties as a welder without the welding equipment.

8 16. That the welding equipment was secured on the $\frac{3}{4}$ ton flatbed welding truck
9 Defendant Brown was driving on or about August 14, 2020 at all material times herein.

10 17. That on or about August 14, 2020, Defendant Brown, driving the $\frac{3}{4}$ ton flatbed
11 welding truck East on State Route 80, at or near Mile Post 337, attempted to pass slower
12 moving vehicles and moved into the Westbound lane across a solid double yellow line, a
13 “no passing zone,” going uphill, on a blind curve, and collided head-on with the car being
14 driven Westbound by Benjamin Saffer.

15 **COUNT ONE**
16 **Negligence/Wrongful Death**

17 18. The Plaintiff hereby incorporates in its entirety the foregoing allegations and
18 contents of this Complaint, herein as if the same were fully set forth.

19 19. That on August 14, 2020, Defendant Brown, so carelessly, recklessly and
20 negligently operated the $\frac{3}{4}$ ton flatbed welding truck he was driving so as to cause the
21 same to collide head-on with the car being driven by Benjamin Saffer, at or near State
22 Route 80, near Mile Post 337, Bisbee, Arizona.

23 20. That as a direct and proximate result of the Defendant’s negligence, Benjamin
24 Saffer died from his injuries caused by the head-on collision; that the statutory
25 beneficiaries have suffered the loss of love, affection, companionship, care, protection,
26 and guidance since Mr. Saffer’s death and in the future, as well as suffered the pain, grief,

1 sorrow, anguish, stress, shock, and mental suffering already experienced, and reasonably
2 probable to be experienced in the future, the loss of income and services that have already
3 been lost as a result of his death, and that are reasonably probable to be lost in the future,
4 and have incurred the reasonable expenses of cremation and funeral, all in a manner to be
5 proven at trial; that the Plaintiffs are entitled to bring this action and seek the recovery of
6 all damages allowed by law.

7 21. That the Plaintiffs are entitled to an award of any and all costs necessarily incurred
8 in the prosecution of this matter pursuant to A.R.S. § 12-341.

9 **WHEREFORE**, the Plaintiffs seek judgment against the Defendants as
10 follows:

- 11 1. That judgment be entered in the Plaintiffs' favor and the statutory
12 beneficiaries be awarded the full amount of money that will reasonably and
13 fairly compensate each of them, separately, for the following elements of
14 damages proved by the evidence:
 - 15 a. The loss of love, affection, companionship, care, protection, and
16 guidance since their father's death and in the future;
 - 17 b. The pain, grief, sorrow, anguish, stress, shock, and mental suffering
18 already experienced, and reasonably probable to be experienced in the
19 future;
 - 20 c. The income and services that have already been lost as a result of their
21 father's death, and that are reasonably probable to be lost in the future;
 - 22 d. The reasonable expenses of the Decedent's funeral and burial;
- 23 2. That judgment be entered in the Plaintiffs' favor and they be awarded any
24 and all incidental and consequential damages.
- 25 3. For post judgment interest thereon at the rate of ten percent (10%) per
26 annum until the Judgment amount is paid in full, or at the highest rate
allowed by law.
4. For costs under A.R.S. §12-341 with interest thereon accruing at the legal
rate of 10% per annum, or at the highest rate allowed by law.

1 fairly compensate each of them, separately, for the following elements of
2 damages proved by the evidence:

- 3 a. The loss of love, affection, companionship, care, protection, and
4 guidance since their father's death and in the future;
- 5 b. The pain, grief, sorrow, anguish, stress, shock, and mental suffering
6 already experienced, and reasonably probable to be experienced in the
7 future;
- 8 c. The income and services that have already been lost as a result of
9 their father's death, and that are reasonably probable to be lost in the
10 future;
- 11 d. The reasonable expenses of the Decedent's funeral and burial;

- 12 2. That judgment be entered in the Plaintiffs' favor and they be awarded any
13 and all incidental and consequential damages.
- 14 3. For post judgment interest thereon at the rate of ten percent (10%) per
15 annum until the Judgment amount is paid in full, or at the highest rate
16 allowed by law.
- 17 4. For costs under A.R.S. §12-341 with interest thereon accruing at the legal
18 rate of 10% per annum, or at the highest rate allowed by law.
- 19 5. For such other and further relief as the Court deems just and proper.

20 **COUNT THREE**

21 **Negligence Hiring/Training/Retention**

22 27. The Plaintiff hereby incorporates in its entirety the foregoing allegations and
23 contents of this Complaint, herein as if the same were fully set forth.

24 28. That Defendant Southwest Valley Constructors Co. knew or should have known
25 that Defendant Brown was unqualified, untrained or inadequately trained to properly work
26 and transport a welder to a remote job site.

27 29. That Defendant Southwest Valley Constructors Co. had a duty to hire and/or retain
28 only qualified and/or adequately trained personnel/welders to work and transport a welder

1 to a remote job sites and to perform the duties thereof in a competent non-negligent and/or
2 non-reckless manner.

3 30. That Defendant Southwest Valley Constructors Co.'s failure to properly hire, train
4 and/or retain a qualified and/or adequately trained personnel/welder (Defendant Brown)
5 was a direct and proximate cause of the Decedent's death and the Plaintiffs' losses.

6 31. That as a direct and proximate result of the Defendant Southwest Valley
7 Constructors Co.'s negligence, Benjamin Saffer died from his injuries caused by the head-
8 on collision; that the statutory beneficiaries have suffered the loss of love, affection,
9 companionship, care, protection, and guidance since Mr. Saffer's death and in the future,
10 as well as suffered the pain, grief, sorrow, anguish, stress, shock, and mental suffering
11 already experienced, and reasonably probable to be experienced in the future, the loss of
12 income and services that have already been lost as a result of his death, and that are
13 reasonably probable to be lost in the future, and have incurred the reasonable expenses of
14 cremation and funeral, all in a manner to be proven at trial; that the Plaintiffs are entitled
15 to bring this action and seek the recovery of all damages allowed by law.

16 32. That the Plaintiffs are entitled to an award of any and all costs necessarily incurred
17 in the prosecution of this matter pursuant to A.R.S. § 12-341.

18 **WHEREFORE**, the Plaintiffs seek judgment against the Defendants as
19 follows:

20 1. That judgment be entered in the Plaintiffs' favor and the statutory
21 beneficiaries be awarded the full amount of money that will reasonably and
22 fairly compensate each of them, separately, for the following elements of
damages proved by the evidence:

23 a. The loss of love, affection, companionship, care, protection, and
24 guidance since their father's death and in the future;

25 b. The pain, grief, sorrow, anguish, stress, shock, and mental suffering
26 already experienced, and reasonably probable to be experienced in the
future;

1 c. The income and services that have already been lost as a result of
2 their father's death, and that are reasonably probable to be lost in the
3 future;

4 d. The reasonable expenses of the Decedent's funeral and burial;

5 2. That judgment be entered in the Plaintiffs' favor and they be awarded any
6 and all incidental and consequential damages.

7 3. For post judgment interest thereon at the rate of ten percent (10%) per
8 annum until the Judgment amount is paid in full, or at the highest rate
9 allowed by law.

10 4. For costs under A.R.S. §12-341 with interest thereon accruing at the legal
11 rate of 10% per annum, or at the highest rate allowed by law.

12 5. For such other and further relief as the Court deems just and proper.

13 DATED this 14th day July, 2022.

14 **THE RUSSELL'S LAW FIRM, PLC**

15
16 /s/ D. Christopher Russell
17 D. Christopher Russell
18 Attorneys for Plaintiffs
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VERIFICATION

STATE OF OHIO)
)ss.
 County of CLARK)

MELISSA CLANCY being first duly sworn, upon her oath depose and states as follows: That she is the Plaintiff representative for the statutory beneficiaries in the above-captioned action; that she has read the foregoing Complaint, know the contents thereof, and that the matters and things alleged therein are true in substance and in fact, except for those matters alleged upon information and belief, and as to those allegations, she believes them to be true.


 MELISSA CLANCY

SUBSCRIBED AND SWORN to before me this 24 day of May, 2022.


 NOTARY PUBLIC

My Commission Expires: April 15 2027



AUGUST McPHETERS
 Notary Public, State of Ohio
 Clark County
 Commission No. 2022-RE-847887
 My Commission Expires
 April 15, 2027